REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG PROVINCIAL DIVISION, PRETORIA

CASE NUMBER: 8762/13

DATE: 27 MARCH 2015

In the matter between:

H[...] C[...] V[...] obo E[...]

V[...] AND C[...] V[...] PLAINTIFF

and

ROAD ACCIDENT FUND DEFENDANTS

JUDGMENT

WINDELL J:

Introduction

[1] This is a claim for loss of services. The plaintiff lost his wife *(hereinafter referred to as the deceased)* in a motor vehicle accident on 25 September 2011. The plaintiff sues in his capacity as husband and natural guardian of two minor children, E[...] (6 years) and C[...] (15 years).

[2] The merits were conceded in favour of the plaintiff and the matter only proceeded on the issue of quantum.

[3] It is common cause that the deceased, during her lifetime, was a housewife that took care of the housekeeping duties and looked after the minor children while the plaintiff worked. It is not disputed that the

minor children need to be taken care of during the day and that the plaintiff had to appoint a nanny/housekeeper to render the services previously rendered by his wife. The defendant, however, disputes that the plaintiff incurred the costs and submitted that the plaintiffs evidence alone, without supporting documents, are not sufficient to prove the claim.

[4] The plaintiff was the sole witness in the case. He testified that he appointed a lady by the name of Sophie as housekeeper and nanny shortly after his wife passed away. He paid for her services in cash and did not keep any receipts or record of the payments. She left his employment in February 2012 whereafter he employed a lady by the name of Martha in the same position. He did not keep any records and is unable to produce documentary proof of the expenses. She left his employment in May 2014. The plaintiff then appointed Josephine. She is still in his employment and he currently pays her R 4600 per month. He has compiled a spreadsheet of the expenses he incurred until December 2014. The total of his past expenses are R 153 227.

[5] Plaintiff was a reliable witness. There were no discrepancies in his testimony and no improbabilities. In the circumstances of this case it did not matter that he did not have any documentary proof. He gave direct evidence to what his expenses were. He also acquired a quotation from an institution called Apples Au pairs, who indicated that that an au pair would cost the plaintiff R 5600 per month. The amount he is claiming is far less. I accept that the plaintiff will need a housekeeper until the youngest child E[...] reaches the age of majority, which will be another 12 years. I am satisfied that the plaintiff suffered a loss as a result of the accident.

[6] The services lost must be converted into a lump sum. In the assessment, the period during which the services were likely to be rendered as well as the monetary value of the services has to be determined. The amount thus obtained must then either be increased or reduced to account for contingencies. The assessment is thus similar to that of loss of maintenance.

[7] In the absence of any actuarial calculation, the future loss was calculated at the current amount paid monthly (R 4600) multiplied by 12 months, which amount was multiplied by 11 years 9 months (the amount of years until the youngest child reaches the age of 18 years). This amounts to a future loss of R 648 600.

[8] In calculating the plaintifFs future loss no consideration was given to the annual increase of the housekeeper’s salaiy, neither was the influence of inflation taken into account. On the other hand, plaintiff will receive the amount upfront before he incurred the costs and no capitalization of the figure was accounted for either.

General Contingencies

[9] Contingencies must be applied to the future loss. In *Seme v RAF 2008 JOL 22068 D in par [51]* Tshabala JP (as he then was) in dealing with contingencies said the following:

> "*Determining what contingencies to take into account is by its very nature a process of subjective impression rather than objective calculation. It is a matter that falls within the discretion of the court, which will determine an amount that it considers to be right rather than being tied down by inexorable actuarial calculations. However, the courts are mindful of the fact that the process involves pondering the improbable and primarily encompasses educated guesswork in which the court makes assumptions which cannot be proved.* "

[10] In *Cooke v Cooke NO v Maxwell 1942 SR 133* the plaintiff sued for damages for the loss of his wife's services in the care, clothing and upbringing of their child. The Court decided that the loss to the plaintiff was the amount which he would have to pay to replace his wife's services. The court took into account the factors that, as he grew older, the child might require less attention and that the plaintiff might possibly remarry.

<u>Prospects of remarriage</u>

[11] The plaintiff was bom on 4 September 1971 and is currently 44 years old. In terms of the Remarriage Deductions Table of *Koch, The Quantum Yearbook, 2012, page 100,* remarriage deduction applicable to a white male aged 44 is a percentage of 22%. I agree with counsel for plaintiffs contention that although the plaintiff might remarry, this does not necessarily mean that his new wife will also look after the children as his previous wife did, and the probability that a housekeeper will remain necessary, is still very high. There would also be no legal duty on a prospective new wife to take care of the minor children. Re-marriage contingencies are also applied to loss of support over a spouse's lifetime rather than the loss of services for the duration of the child's dependence as is the case here.

<u>Life expectancy of the youngest child</u>

[12] The plaintiff testified that the youngest child is currently 6 years old. No evidence was given relating the youngest child's health condition, or to any medical conditions he may have at present, and as such it can be assumed that he has a normal life expectancy which will be way in excess of 18 years old.

[13] According to the tables contained in *Koch* as referred to *supra,* and specifically Table 2 (white census data (1985)), the number of males alive at age 6 is reflected as 98491, and the number of males alive at age 18 is reflected at 97841. As such, the percentage difference from age 6 to age 18 is 0.99%, which is the percentage chance of the youngest child dying before he reaches the age of 18 years old.

[14] Taking into consideration all the factors applicable to this case a contingency of 5% is applied to the

future loss.

[15] In the result, the following order is made:

(a) The defendant is ordered to pay the plaintiff the sum of R 761 735.65 for loss of services.

(b) The defendant shall pay the plaintiff interest on the aforesaid sums at the rate of 15,5 per cent per annum calculated from a date 14 days from the date of this order;

(c) Costs of suit

L WINDELL

JUDGE OF THE HIGH COURT

Attorney for plaintiff: Munro, Flowers & Vermaak

Counsel for appellants: Adv L. Keijser

Attorney for respondent: Kekana Hlatswayo Radebe Inc.

Counsel for respondent: Adv. D.E Westebaar

Date matter heard : 20 February 2015

Judgment date: 27 March 2015